IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6942 OF 2006

M/s.North West Airlines ..Petitioner.

V/s.

Union of India & Ors. ..Respondents.

Mr.K.K.Shroff i/b. M/s.Paras Kahad and Association for petitioner.

Mr.A.M.Sethna with R.C.Master for respondents.

CORAM : DR.S.RADHAKRISHNA AND J.P.DEVADHAR, JJ.

DATED : 9TH MARCH, 2006.

P.C.:-

1. Heard learned counsel for the petitioner and the respondents. Rule, returnable forthwith. By consent of the parties, the petition is taken up for final hearing.

2. This petition is filed to challenge the order in Revision dated 29/5/2006 passed by the Jt.Secretary to Government of India on an application filed by the petitioner under section 129 DD of the Customs Act, 1962.

3. For the delay in payment of Foreign Travel Tax for the month of October, 1997, November, 1997, December, 1997, February, 1998 and July, 1998 show

cause notice as well as corrigendum was issued to the petitioners calling upon the petitioner to show cause as to why action should not be taken under Rules 4 & 7 of the Foreign Travel Tax Rules, 1979 and penalty should not imposed upon them under Rule 10A(1) and 10A(2) of the Foreign Travel Tax Rule, 1979 and section 39(3) / 38(4) of the Finance Act, 1979.

4. By an order in original dated 25/11/2004 the Deputy Commissioner of Customs (FTT DEPT) while confirming the short payment of Foreign Travel Tax and confirming the amount of interest, passed an order levying minimum penalty in respect of delay for each month.

5. Challenging the aforesaid order, the petitioner filed a Revision Application and the same was dismissed by the Jt.Secretary to the Government of India on 29th May, 2006. Hence this petition.

6. Mr.K.K.Shroff, learned counsel appearing on behalf of the petitioner fairly stated that although the Judgment of this Court in the case of **Iran National Airways V/s. Union of India** reported in **202 E.L.T. 588 (Bom.)** is against the petitioner, in the light of the decision of the Apex Court in the case of **M/s.Hindustan Steel Ltd. V/s. The State of Orissa**

reported in **A.I.R. 1970 Supreme Court 253** and in the case of **Zunzarrao Bhikaji Nagarkar V/s. Union of India and Ors.** reported in **A.I.R. 1999 Supreme Court 2881**, the decision of this Court's reconsideration.

7. In our opinion, the decision of this Court in the case of Iran National Airlines (supra), squarely covers the issue raised in this petition. It is held in that case that mens rea is not sine qua non to the imposition of penalty under section 38(3) of the Finance Act, 1979 or Rule 10A(1) of the Foreign Travel Tax Rules, 1979 and accordingly, it is held that minimum penalty is mandatory. The decision of the Apex Court in the case of M/s.Hindustan Steel Ltd. (supra) and Zunzarrao Bhikaji Nagar (supra) are distinguishable on facts and have no application to the facts of the present case.

8. In this view of the matter, in the facts and circumstances of the present case, where admittedly there is delay in payment of the Foreign Travel Tax collected by the petitioner to the Government of India, the levy of minimum penalty cannot be faulted.

9. Accordingly, Rule is discharged with no order as to costs.

(DR.S.RADHAKRISHNAN,J.)

(J.P.DEVADHAR, J.)